

United States District Court

for

District of Guam

Report for Modifying the Conditions or Term of Supervision with Consent of the Offender

(Probation Form 49, Waiver of Hearings is Attached)

Name of Offender: **CAYAS, Edwin Garcia**

Case Number: **CR 00-00124-001**

Name of Sentencing Judicial Officer: **Honorable Robert Clive Jones**

Date of Original Sentence: **April 1, 2005**

Original Offense: **Count I: Conspiracy to Import Crystal Methamphetamine, in violation of 21 U.S.C. §§ 952(a), 960, & 963; and Count VI: Conspiracy to Launder Monetary Instruments, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) & (ii), & 1956(h) & 2.**

Original Sentence: **80 months imprisonment for Counts I and VI, to be served concurrently. Following imprisonment he was ordered to serve a five year term of supervised release for Count I and three year term for Count VI, both to run concurrently. Supervised release conditions include that he: submit to the statutory three drug tests; not possess a firearm, ammunition, destructive device, or any other dangerous weapon; cooperate in the collection of DNA as directed by the probation officer; not possess illegal controlled substances, with mandatory revocation for possession of illegal controlled substances; submit to mandatory drug testing as directed by the Probation Officer, with mandatory revocation for refusal to comply; submit to a search of his person, property, or automobile under his control, search to be conducted by the probation officer or any authorized person under immediate and personal supervision of the probation officer without a search warrant to ensure compliance with all conditions of release; refrain from the use of all alcoholic beverages; participate in a substance abuse treatment program which shall include drug testing, and make co-payment for the program at a rate to be determined by the U.S. Probation Office; perform 200 hours of community service; and that he pay a \$200 special assessment fee.**

Type of Supervision: **Supervised Release**

Date Supervision Commenced: **April 10, 2007**

PETITIONING THE COURT

☐

To extend the term of supervision for _____ years, for a total term of _____ years.

☒

To modify the conditions of supervision as follows:

1. Edwin Garcia Cayas, as a condition of supervision, shall abstain from using alcohol and submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed four drug tests per month, as directed by the probation officer, pursuant to 18 U.S.C. § 3583(d).

CAUSE

On September 2, 2005, the Ninth Circuit, in *United States v. Stephens*, No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. §3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power. To assist the Court in determining the appropriate number of drug tests, U.S. Probation Officer Vikki A. Montano, Central District of California, has evaluated the offender's history of drug use, and the drug detection period of his drug of choice. As methamphetamine is Edwin Cayas' drug of choice, and it has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at four. This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender. To address the implications of *United States v. Stephens*, Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify the Mr. Cayas' mandatory condition to set the maximum number of tests the defendant must submit. It is therefore recommended that the mandatory condition be modified as follows:

"Edwin Garcia Cayas, as a condition of supervision, shall abstain from using alcohol and submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed four drug tests per month, as directed by the probation officer, pursuant to 18 U.S.C. § 3583(d)."

Based on the information above, the probation officer respectfully requests that the Court modify the conditions of supervised release, pursuant to 18 U.S.C. § 3583(e)(2) as outlined above. Attached is Probation Form 49, Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision.

Reviewed by:



/s/ ROSSANNA VILLAGOMEZ-AGUON

Chief U.S. Probation Officer

Date: January 3, 2008

Respectfully submitted,



by: /s/ GRACE D. FLORES

U.S. Probation Officer

Date: January 3, 2008

THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☐ The Modification of Conditions as Noted Above.
- ☐ Other

United States District Court

District Guam

Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

Edwin Garcia Cayas, as a condition of supervision, shall abstain from using alcohol and submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed four tests per month, as directed by the probation officer, pursuant to 18 USC 3583(d).

Witness

Vicki Montano
U.S. Probation Officer

Signed

[Signature]
Probationer or Supervised Releasee

9-25-07

Date